IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3302 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARJIVANBHAI H. PARMAR

Versus

DIRECTOR OF PROHIBITION AND EXCISE

Appearance:

1. Special Civil Application No. 3302 of 1992

MR SH SANJANWALA for Petitioner No. 1

MS MANISHA LAVKUMAR Ld. AGP for Respondents No. 1-3

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 15/03/2002

ORAL JUDGEMENT

1. Ms. Manisha Lavkumar learned AGP for the respondents present. None present for the petitioner.

2. In this special civil application, the petitioner

has been challenging the order dated 30.4.1992 (Annexure-G) compulsorily retiring him from the services of the respondent no.1 with effect from 30.4.1992.

3. The facts leading to the filing of the petition shortly stated are that the petitioner was working as Head Clerk in the office of Director of Prohibiton and Excise, Ahmedabad. The respondent vide Annexure-A took the decision dated 6.4.1992 to compulsorily retire the petitioner on his completing 55 years of age on the ground that the confidential reports of the petitioner were adverse inasmuch as he was not regularly attending duties; that the petitioner was also ordered to be paid three months salary in lieu of the notice. The petitioner had also requested that he be transferred to Mahesana where there is a vacancy available, or in the alternative he be permitted to retire voluntarily. Thereafter, the petitioner was persuaded to seek voluntary retirement and in that event, the order dated 6.4.1992 (Annexure-A) compulsorily retiring him from services would be withdrawn. That the petitioner accordingly sought voluntary retirement and, therefore, the order (Annexure-A) came to be cancelled / withdrawn by the respondent; that as the offer for voluntary retirement was under pressure / coercion, the petitioner withdrew his offer of voluntary retirement. It is also the say of the petitioner that he deposited three months salary which was given to him in lieu of the notice and thereafter, the respondent passed another order dated 30.4.1992 (Annexure-G) compulsorily retiring the petitioner from services.

4. The respondent refuted the averments of the petition by filing affidavit in reply and contended that the petitioner requested for his transfer to Mahesana as there was vacancy available in Mahesana or in the alternative, permit him to seek voluntary retirement with effect from 30.4.1992; that the respondent did not accept the request for petitioner's transfer to Mahesana, but was permitted to seek voluntary retirement vide letter dated 13.4.1992; that the petitioner subsequently withdrew his offer for voluntary retirement and did not deposit three months salary which was paid to him in lieu of notice; that as the petitioner withdrew the offer for voluntary retirement, the order dated 30.4.1992 (Annexure-G) came to be passed compulsorily retiring the petitioner from service with effect from 30.4.1992. It is further stated that petitioner was made to compulsorily retire for the reason that his last 8 years C.R.s were not satisfactory and one increment was also withheld. That C.R. suggests that the petitioner was

consistently irregular in attending the duty, and for the administrative reasons he was made to retire compulsorily. It is contended that the petition is not bone fide and same is liable to be rejected.

5. In course of the hearing, It is submitted by Ms. Manisha Lavkumar learned AGP that initially the notice was issued in the civil application praying for stay of the implementation of the impugned order. But no ex-parte relief was granted to the petitioner. That by subsequent order, interim relief in the civil application was refused and the application was dismissed, and as the petitioner did not get any interim relief the petitioner stood compulsorily retired with effect from 30.4.1992.

6. Today, none is present for the petitioner. In view of the above facts on record, it appears that petitioner is not interested in perusing this petition. Looking to the reasons for which he was compulsorily retired and the fact that he himself had requested to permit him to seek voluntary retirement, and subsequently withdrew offer of voluntary retirement, no interference is called for in the impugned order and the petitioner having been compulsorily retired from service with effect from 30.4.1992, the petition has also become infructous.

7. In the result, the petitioner is dismissed. Rule is discharged with no order as to costs.

(N.G.Nandi,J.)

(vipul)